

MOTION BY SUPERVISOR KATHRYN BARGER

JULY 7, 2020

**DEVIL’S GATE RESERVOIR SEDIMENT REMOVAL PROJECT SETTLEMENT**

The Devil's Gate Dam and Reservoir were built in 1920 and are located in the 47 square mile Arroyo Seco Watershed. This watershed includes the cities of Pasadena, South Pasadena, La Canada, unincorporated community of Altadena and the Los Angeles communities of Highland Park, Hermon, Mt. Washington, Montecito Heights, and Lincoln Heights.

The purpose of the dam is to protect downstream communities from flooding and capture sediment and debris before it flows into the Arroyo Seco. Significant storms over the years have resulted in the build-up of sediment in the reservoir behind the dam.

The 2009 Station Fire and subsequent storms caused 1.3 million cubic yards of sediment to erode from the San Gabriel Mountains and deposit into the reservoir. In 2010, the Department of Public Works, on behalf of the Los Angeles County Flood Control District, proposed a large-scale sediment removal project at the reservoir. Due to the feedback from constituents and concerned community groups citing environmental concerns, the Board of Supervisors, acting as the governing body of the Los Angeles County Flood Control District, directed Public Works to prepare an Environmental Impact Report (EIR) and work with stakeholders to minimize the impacts associated with removing sediment from the reservoir.

In 2014, the Board certified the EIR, approving the project alternative that significantly reduced the project's impacts. In 2017, Public Works revised and recirculated portions of the Final EIR to further clarify the project's mitigation measures, and on November 7, 2017, the Board certified the Revised Final EIR (RFEIR). At that same time, the Board voted to reduce the amount of sediment removal by 700,000 cubic yards, to further reduce the project's impacts to the community by shortening the duration of the project by approximately one year.

-M O R E-

MOTION

SOLIS	_____
RIDLEY-THOMAS	_____
KUEHL	_____
HAHN	_____
BARGER	_____

In 2018 and 2019, work on the project commenced. Non-native invasive plant species were removed and major native plant restoration efforts are already underway to ultimately enhance both the natural beauty of the area and create an improved environment for our native wildlife. The first season of sediment removal also occurred from May through October of 2019, and the second season of sediment removal started three weeks ago. However, the continuation of this work has been constantly at risk as a result of litigation filed in December 2017 by Petitioners the Arroyo Seco Foundation and the Pasadena Audubon Society, which challenged certain aspects of the RFEIR.

After significant litigation and a nearly year-long series of negotiations between the Petitioners and the Flood Control District, the proposed Settlement Agreement has been reached, which both allows this critical safety project to continue forward, but also brings substantial benefits to the community and the native plant and animal life in the Hahamonga Basin. The Settlement Agreement is attached to this motion, and will allow the project to proceed, with the further benefits to the community and the environment specified in the agreement.

**I, THEREFORE MOVE**, that the Board of Supervisors, acting as the governing body of the Los Angeles County Flood Control District, take the following actions:

1. Find that the execution of the Settlement Agreement between Arroyo Seco Foundation, Pasadena Audubon Society, and the Los Angeles County Flood Control District specifying actions to further reduce the potential environmental impacts of the Project, is within the scope of the November 12, 2014 certified Final Environmental Impact Report (FEIR) for the Devil's Gate Reservoir Sediment Removal and Management Project (Project), as revised by the November 7, 2017 certified Recirculated Portions of the Final Environmental Impact Report (RFEIR) prepared for the Project.
2. Further, find that, pursuant to Public Resources Code section 21166 and State CEQA Guidelines sections 15162-15164, there have been no substantial changes to the Project or the circumstances under which it will be undertaken, and that the actions, both individually and cumulatively specified in the Settlement Agreement, are fully consistent with the FEIR, as revised by the RFEIR, and that they do not result in an additional or more severe environmental impact to the environment, including at the Project site or to the surrounding community. The Board confirms that the previously adopted November 7, 2017 Findings of Fact and Statement of Overriding Consideration and the Mitigation Monitoring and Reporting Program continue to be adequate for the approval of the Settlement Agreement.

-M O R E-

3. Approve the attached Settlement Agreement with Arroyo Seco Foundation and the Pasadena Audubon Society, and authorize the Director of Public Works or his designee to execute the Settlement Agreement on behalf of the Los Angeles County Flood Control District, and to take all actions specified in the agreement or necessary for the implementation of the terms of the agreement, including, but not limited to the execution of any necessary change orders and the authorization of any payments specified therein.

# # #

KB:aso

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and Mutual General Release ("**Agreement**") is made by and between Arroyo Seco Foundation, a California non-profit corporation ("ASF"), and Pasadena Audubon Society, a California non-profit corporation ("PAS"), on one hand (collectively referred to herein as "**Petitioners**"), and the Los Angeles County Flood Control District ("**District**"), a public entity, on the other hand. Petitioners and District are sometimes individually referred to in this Agreement as "Party" and collectively as the "Settling Parties".

### Recitals

The construction project, which is the subject of this Agreement the ("Project"), is intended to restore 1.7 million cubic yards ("mcy") of flood protection capacity within the reservoir behind the District's Devil's Gate Dam, and to implement a reservoir management system to maintain that capacity.

The loss of this flood protection capacity was the result of the build-up of sediment in the reservoir over the years, especially after the August, 2009 Station Fire, and the subsequent large rainy seasons. The Station Fire burned nearly 252 square miles, including 100% of the undeveloped watershed surrounding the Reservoir, and the two large rainy seasons in the two following years after the Station Fire caused approximately 1.1 mcy of sediment to flow into the reservoir.

On November 12, 2014, the Los Angeles County Board of Supervisors, sitting as the Governing Board of the District, certified the Final Environmental Impact Report ("FEIR"), adopted findings and a Statement of Overriding Considerations, and approved the Project, adopting Alternative 3 Configuration D, which would have removed 2.4 mcy of sediment.

On December 11, 2014, Petitioners filed a lawsuit challenging the District's approval of the Project, contending that the Project violated CEQA.

On February 14 and March 23, 2017, the Court conducted hearings on the case, issued a tentative decision and adopted a final decision granting Petitioners' Petition for Writ of Mandate in part, finding that the FEIR was deficient as to Mitigation Measure Air Quality 1, Mitigation Measures Biological Resources 6, 7, and 8, and the FEIR's cumulative impacts analysis, and Directing the District to correct those deficiencies and to recirculate the necessary portions of the FEIR for public comment.

On July 24, 2017, the District Released the Revised FEIR ("RFEIR") for public comment.

On November 7, 2017 the Los Angeles County Board of Supervisors, sitting as the Governing Board of the District, conducted a public hearing on the RFEIR, adopted the RFEIR, and directed that the total volume of sediment removed during the Project be reduced by 700,000 cubic yards, while maintaining the proposed footprint, so that instead of removing a maximum

of 2.4 mecy of sediment, plus any additional inflows during the Project, a maximum of 1.7 mecy, plus any additional inflows during the Project, will be removed.

On December 5, 2017, the Court discharged the writ petition.

On December 7, 2017, Petitioners filed a second writ petition, contending that the Project continued to violate the requirements of CEQA.

In preparation for sediment excavation, the Project cleared vegetation over an approximately 50 acre region from November 2018 to January 2019. The first season of excavation of sediment from the Project has now occurred between May 2019 and November 2019, resulting in the excavation of approximately 445,460 cubic yards of sediment.

The Settling Parties now wish to settle all claims that each Party has or may have against the other arising from or relating to the lawsuit, including Petitioners' contentions concerning whether the Project violates CEQA, which claims now exist or may exist in the future relating to the project in any manner whatsoever.

NOW, THEREFORE, for full and valuable consideration, and based upon the foregoing recitals, and the terms, conditions, covenants and agreements contained herein, the Settling Parties agree as follows:

1. The Parties agree that, to further reduce the potential environmental impacts of the Project, the District will take the following additional actions listed below. The Parties further agree that each of these additional actions, both individually and cumulatively, are fully consistent with the RFEIR, and do not result in an additional environmental impact to the Project site or to the surrounding community:
  - a. The District will not clear, excavate or otherwise conduct Project activities in the 14 acres behind the Permanent Maintenance Area depicted on the attached Exhibit A, which were originally designated for clearing and excavation as part of the project. Because these 14 acres will not be cleared, the Parties agree that the area will also not need to be restored by the Project.
  - b. As depicted on Exhibit A, the District agrees to convert from annual maintenance to episodic maintenance, as those terms are defined in the RFEIR, approximately 4.46 acres at the bottom of the basin. This area will be in two, 75 foot wide strips adjacent to the two sides of the basin, and will include efforts to sculpt a diversion of low flows to assist in irrigation of these strips. Additionally, as depicted, an approximately 0.6-acre area near Lower Altadena Drain and an approximately 1.22-acre area near Flint Wash (collectively "Drainage Areas") will be excluded from the annual and episodic maintenance regions, except as reasonably necessary to repair erosion or to address overgrowth clogging drainage of the Drainage Areas. The District will notify and consult with Petitioners at least 30 days prior to conducting any activities within the Drainage Areas. To the extent

that any portions of these areas have already been cleared of vegetation for the Project, the District will restore the Drainage Areas.

- c. The District will carry out the habitat restoration plan approved by the California Department of Fish and Wildlife on November 16, 2018 ("Habitat Restoration Plan").
- d. The District will make best efforts to prevent the inflow of trash from the West Altadena Storm Drain, located near 34.187295, -118.173141.
- e. During the annual maintenance period (*i.e.* after the District's initial removal of 1.7 mcy of sediment), the District agrees to limit excavation of sediment to no more than 220,000 cubic yards per year.
- f. During the annual maintenance period (*i.e.* after the District's initial removal of 1.7 mcy of sediment), the District agrees to limit the daily number of sediment removal truck trips to 300 round trips per day.
- g. During the annual maintenance period (*i.e.* after the District's initial removal of 1.7 mcy of sediment), and unless otherwise required for safe dam operation, the District agrees to reduce the release of water from the dam after the storm season so that, to the extent feasible, a pool of water remains behind the dam until July first of that year. The District will allow ground depressions to form naturally and retain water within the Episodic Maintenance Areas of the Basin and will not drain ground depressions, with the exception of grading/maintenance required to maintain low flow pathways for the Episodic Maintenance Areas or to comply with health and safety requirements (such as vector control).
- h. The District agrees to have wheel washes and rumble strips installed and maintained at the Project to ensure that there is not track-out of mud/dirt in violation of SCAQMD Rule 403. The District further agrees that, as specified in the permit with the City of Pasadena, the wheel wash constructed adjacent to the truck exit at Oak Grove Drive, will be removed at the conclusion of the removal of the 1.7 mcy of sediment, and the area will be restored.
- i. To promote the unique benefits of utilization of extremely local native plant materials and seeds in the restoration process, the District will require its plant restoration services contractor to obtain plant material and seeds harvested from the Hahamongna Watershed Park by the Hahamongna Native Plant Nursery, operated by the Arroyo Seco Foundation ("ASF Nursery"), in the quantities specified in the attached Exhibit B. The District agrees to pay the ASF Nursery the then current commercial market rate for these plant materials and seeds, and ASF agrees that, in the event that the ASF Nursery is unable to timely deliver any of the agreed quantities, then those quantities may be obtained from other commercial nurseries. In an effort to assist the ASF Nursery in the production of the necessary plant materials and seeds, the District agrees to cause a pre-payment of \$10,000.00 to be made to the ASF Nursery by no later than 120 days before

delivery of the plants material and seeds ("Advance Payment"). The Advance Payment shall be deducted from the total amount to be paid to the ASF Nursery for the agreed quantities of plant material and seeds to be obtained from the Nursery. Prior to this pre-payment the ASF Nursery will invoice the District's plant restoration services contractor for this pre-payment.

2. Petitioners agree to provide letters and other advocacy to permitting agencies and the local communities in support of the various actions the District will take, as described in paragraph 1(a) through 1(i), above.
3. The District will conduct and prepare an Annual Project Report, which will describe the amount of sediment gained or lost during that year's storm season, the current sediment capacity of the Basin, and the state of the Project's on- and off-site mitigation areas. The District will present the results of the Annual Project Report at the earliest feasible meeting of the Council of Arroyo Seco Agencies.
4. The District agrees to pay the Pasadena Audubon Society's actual costs for developing, planning, constructing and installing up to three "bird blinds", at locations mutually agreeable to PAS, the District, and the City of Pasadena near the project site, up to a maximum total amount of \$50,000. The District further agrees to take all reasonable steps within the power of the District and the County to enable that installation (*e.g.* permitting, discussions with the Cities of La Canada Flintridge and Pasadena, *etc.*) PAS will provide the County invoices for the actual costs incurred for reimbursement. The District shall meet and confer with Pasadena Audubon Society regarding placement of the bird blinds.
5. The District agrees to publish on the Project website a copy of all reporting related to the project to United States Fish & Wildlife Services, the United States Army Corps of Engineers, the Regional Water Quality Control Board, the California Department of Fish & Wildlife and any other regulatory agencies, and to provide copies to the Arroyo Seco Foundation and to the Pasadena Audubon Society.
6. The District will encourage the United States Army Corps of Engineers to complete the Arroyo Seco Ecosystem Study, and to do so by April 1, 2021.
7. The District will request in writing that the United States Forest Service complete a seismic and structural study of Brown Canyon Dam in the upper Arroyo Seco by April 1, 2021.
8. The District will continue to require that the "check engine"/on board diagnostic system specified by CARB for that truck's model year is in working condition for all diesel trucks being used for the Project to alert the driver to any issues with the truck's emissions control system. The details of that requirement is attached hereto as Exhibit C.
9. The District will issue a report on the results of the Alternative Fuel (CNG) Truck Pilot Program, which the District conducted during the first season excavation, as soon it completes the report's preparation but no later than August 1, 2020. In addition, the District will amend its contract with the contractor for the project to offer an incentive

payment to promote the use of alternative fuel dirt hauling trucks (e.g. CNG fueled or electric powered), by agreeing to pay the contractor an additional \$2.00 per ton amount for quantities of dirt hauled by trucks equipped with an Electric or CNG engine, certified by CARB and the USEPA to a 0.02 g/bhp-hr (grams per brake horsepower-hour) NOx emissions standard, as indicated in CARB's executive order for that particular engine.

10. The District will conduct the Phase 2A Truck Emissions Measurement Program in conjunction with UC Riverside, as discussed with La Canada-Flintridge for Healthy Air, during the second season of excavation as outlined in the attached Exhibit D or, if UC Riverside is not yet prepared to conduct those efforts in the second season of excavation, as soon thereafter as UC Riverside is prepared to do so. While UC Riverside is not yet capable of conducting the Phase 2B measurements outlined in Exhibit D, if UC Riverside becomes capable of doing so in one of the remaining excavation seasons in time for the District to reasonably conduct those Phase 2B measurements during one of the remaining excavation seasons, the District will do so.
11. The District will work to ensure that Project activities do not create standing water or mud in adjacent oak woodland within Hahamongna Watershed Park. This includes preventing runoff from street sweepers along Oak Grove Dr. from flowing into the park.
12. The District will consult with Petitioners to develop a plan to restore a natural appearance to the Southeast Entrance to the basin, provided that such a plan is acceptable to the City of Pasadena, which has the ultimate permitting authority for any such work.
13. The District agrees to pay Petitioners' reasonable attorney's fees and costs incurred as a result of the second writ petition in the total amount of \$333,468.72. This amount will be made payable to the Mitchell M. Tsai, Attorney At Law PC, and shall be made within sixty (60) days of the date that this Agreement is approved by the Los Angeles County Board of Supervisors.
14. Petitioners agree to dismiss with prejudice its current second writ petition in the Superior Court for the County of Los Angeles (Case No. BS171826, Related Case No. BS152771) as to all named parties and all parties named as Does, and to dismiss with prejudice its appeal of the judgement in its first writ petition filed in the Court of Appeal of the State of California, Second District (Appeal No. B288034), both within thirty (30) days of the date that this Agreement is approved by the Los Angeles County Board of Supervisors.
15. Petitioners also agree not to further contest this Project (both the initial sediment removal of 1.7mcy and the annual maintenance) in court or in any public forum related to the Project, including but not limited to, any litigation concerning the project or the CEQA compliance of the project, so long as the Project is consistent with the Project as approved by the District, including as specified in this Agreement, as of the date this Agreement is approved by the Los Angeles County Board of Supervisors.
16. Although the Parties do not presently believe that such addenda or amendment will be necessary, to the extent that the implementation of this Agreement causes the need for an



addenda or amendment to the RFEIR, Petitioners agree to support and to advocate in favor of such addenda or amendment.

17. In consideration for this Agreement and the full performance by the District and Petitioners of the terms and conditions thereof, the Settling Parties hereby release and forever discharge each other, including all officers, directors, board members, agents, employees and contractors, from any and all claims, causes of action, damages, debts, demands, obligations, attorneys' fees, costs, and liabilities of any nature whatsoever, whether known or unknown, suspected or claimed, including any claimed rights under any additional insured endorsements, which the Settling Parties ever had, now have or ever may claim to have as of the date of this Agreement against each other (whether directly or indirectly), by reason of any act or omission concerning any matter, cause or thing, relating to the lawsuit. These releases and discharges include, but are not limited to, the District, the County of Los Angeles, and the Los Angeles County Board of Supervisors, both sitting as Governing Board of the District and sitting as the Governing Board of the County of Los Angeles.
18. Notwithstanding the release set above, the Settling Parties reserve and do not waive the right to enforce compliance with the terms of this Agreement
19. The parties agree that this Agreement may be enforced pursuant to Code of Civil Procedure Section 664.6. The parties further agree that the court may retain jurisdiction over the parties to enforce the settlement. Concurrently with execution of this Agreement, the Parties shall execute and file a stipulation with the Court, in substantially the same form as the attached Exhibit E, stating that pursuant to Code of Civil Procedure § 664.6 the parties agree that the court shall retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement, and further stipulating that, and requesting the Court to find that, the changes to the Project specified in this Agreement are consistent with the RFEIR. The refusal of the Court to retain jurisdiction and/or make the requested findings shall not invalidate or otherwise change the terms of the Agreement.
20. The release set forth above is a general release of all claims, demands, causes of action, obligations, damages and liabilities of any nature arising from the lawsuit, and is intended to encompass all known, unknown, foreseen and unforeseen claims which the Settling Parties may have in relation to the Project, except for any claims which may arise from enforcement of the terms of this Agreement. The Settling Parties knowingly and intentionally waive any and all rights that each has against the other under the provisions of section 1542 of the California Civil Code, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

21. The Settling Parties acknowledge and agree that this Agreement is a settlement of disputed claims. Neither the fact that the Settling Parties have settled nor the terms of this Agreement shall be construed in any manner as being an admission of any liability by Settling Parties or any of their employees or any affiliated person(s) or entity/ies in this or in any other matter.
22. The Settling Parties understand and agree that the agreements, undertakings, acts and other things done or to be done by them in this Settlement Agreement and Release shall run to and be mutually binding upon their successors, administrators and assigns.
23. The Settling Parties agree to execute and deliver any additional documents and instruments, and to perform any additional acts that may be necessary or appropriate to effectuate, consummate or perform any of the terms of this Agreement.
24. This Agreement constitutes the entire Agreement between the Settling Parties. Its terms supersede all prior discussions, understandings or agreements between the Settling Parties concerning the subject matter of this Agreement.
25. This Agreement may not be amended or modified except by a writing mutually signed by the Settling Parties.
26. This Agreement and its validity, construction and effect shall be governed by the laws of the State of California, and the Settling Parties agree that the venue for any dispute concerning this Agreement shall be in the Superior Court for the State of California, in the County of Los Angeles.
27. This Agreement has been jointly drafted by the Settling Parties, through their attorneys, and any rule of construction to interpret ambiguities against the drafter of the document shall not apply to either Party.
28. This Agreement may be executed by the Settling Parties hereto by facsimile or email, and in separate counterparts, and all such counterparts taken together shall be deemed to constitute one and the same Agreement.

IN WITNESS WHEREOF, the Settling Parties have executed this Agreement, which shall become effective on the date this Agreement is approved by the Los Angeles County Board of Supervisors.

Date: \_\_\_\_\_

**ARROYO SECO FOUNDATION**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**PASADENA AUDUBON SOCIETY**

By \_\_\_\_\_

Its \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Mitchell M. Tsai

Date: \_\_\_\_\_

**LOS ANGELES COUNTY FLOOD  
CONTROL DISTRICT**

By \_\_\_\_\_  
Daniel J. Lafferty  
Deputy Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
MARY C. WICKHAM  
County Counsel  
ROBERT C. CARTWRIGHT  
Assistant County Counsel  
MICHAEL S. SIMON  
Senior Deputy County Counsel

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22. The Settling Parties understand and agree that the agreements, undertakings, acts and other things done or to be done by them in this Settlement Agreement and Release shall run to and be mutually binding upon their successors, administrators and assigns.
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24. This Agreement constitutes the entire Agreement between the Settling Parties. Its terms supersede all prior discussions, understandings or agreements between the Settling Parties concerning the subject matter of this Agreement.
25. This Agreement may not be amended or modified except by a writing mutually signed by the Settling Parties.
26. This Agreement and its validity, construction and effect shall be governed by the laws of the State of California, and the Settling Parties agree that the venue for any dispute concerning this Agreement shall be in the Superior Court for the State of California, in the County of Los Angeles.
27. This Agreement has been jointly drafted by the Settling Parties, through their attorneys, and any rule of construction to interpret ambiguities against the drafter of the document shall not apply to either Party.
28. This Agreement may be executed by the Settling Parties hereto by facsimile or email, and in separate counterparts, and all such counterparts taken together shall be deemed to constitute one and the same Agreement.

IN WITNESS WHEREOF, the Settling Parties have executed this Agreement, which shall become effective on the date this Agreement is approved by the Los Angeles County Board of Supervisors.

Date: June 11, 2020

ARROYO SECO FOUNDATION

By Timothy F. Bruck  
Its Managing Director

Date: June 11, 2020

**PASADENA AUDUBON SOCIETY**

By Laura S. Solomon  
Its President

APPROVED AS TO FORM:

By: Mitchell M. Tsai  
Mitchell M. Tsai

Date: June 11, 2020

**LOS ANGELES COUNTY FLOOD  
CONTROL DISTRICT**

By \_\_\_\_\_  
Daniel J. Lafferty  
Deputy Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
MARY C. WICKHAM  
County Counsel  
ROBERT C. CARTWRIGHT  
Assistant County Counsel  
MICHAEL S. SIMON  
Senior Deputy County Counsel

## **EXHIBIT A**



Location: N:\2014\2014-003.008 Devils Gate Mitigation Plan\MAPS\meeting\_maps\_and\_analysis\2018-10-28 CAD\_Design\_Update\BG\_Impact\_Modification\_20200408.mxd (MAG-rnguidry 4/8/2020)

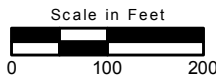


**Figure X.**  
**Impact Modifications**

- Map Features**
- Additional Episodic Maintenance Areas
  - Additional Mitigation Areas

*DRAFT*

Service Layer Credits: Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community





## **EXHIBIT B**



## DEVIL'S GATE RESERVOIR RESTORATION PROJECT - CONTAINER PLANT AND CUTTINGS NEEDS FOR PHASE 2 OF THE HABITAT RESTORATION

## PLANTS NEEDED BY NOVEMBER 15, 2020

## PLANTS NEEDED BY NOVEMBER 15, 2021

Scientific Name	Common Name	Totals	ASF Commitment	Scientific Name	Totals	ASF Commitment
<i>Artemisia douglasiana</i>	mugwort	957	300	<i>Artemisia douglasiana</i>	749	500
<i>Baccharis pilularis</i>	coyote brush	957	957	<i>Baccharis pilularis</i>	749	749
<i>Baccharis salicifolia</i>	mulefat	2393	1000	<i>Baccharis salicifolia</i> *	1873	1000
<i>Populus fremontii</i> *	Fremont cottonwood	957	957	<i>Populus fremontii</i>	749	749
<i>Rubus ursinus</i>	California blackberry	957	957	<i>Rubus ursinus</i>	749	749
<i>Rosa californica</i>	California wild rose	957	957	<i>Rosa californica</i>	749	749
<i>Salix gooddingii</i>	black willow	1914	400	<i>Salix gooddingii</i> *	1498	400
<i>Salix laevigata</i>	red willow	957	300	<i>Salix laevigata</i> *	749	300
<i>Salix lasiolepis</i>	arroyo willow	957	300	<i>Salix lasiolepis</i> *	749	300
<i>Sambucus mexicana</i>	Mexican elderberry	479	479	<i>Sambucus mexicana</i>	375	375
<i>Melica imperfecta</i>	California melic	200		<i>Melica imperfecta</i>		
<i>Polypodium californicum</i>	California polypody	200		<i>Polypodium californicum</i>		
<i>Quercus agrifolia (containers)</i> *	coast live oak	300		<i>Quercus agrifolia (containers)</i>		
<i>Quercus agrifolia (acorns)</i> **	coast live oak	200	200	<i>Quercus agrifolia (acorns)</i>		
<i>Rubus ursinus</i>	California blackberry	200		<i>Rubus ursinus</i>		
<i>Ericameria pinifolia</i>	pinebush	200		<i>Ericameria pinifolia</i>		
<i>Toxicodendron diversilobum</i>	poison oak	200		<i>Toxicodendron diversilobum</i>		
<b>Totals</b>		<b>12984</b>	<b>6807</b>		<b>8988</b>	<b>5871</b>
			\$ 27,228			\$ 23,484

\* May include Black Cottonwood (*Populus trichocarpa*) if permitted

\*\* May include Engelmann Oak (*Quercus engelmanni*) if permitted

- Agreed upon price \$4 per unit

- \$10,000 advance payment each year by July 18th

## **EXHIBIT C**

## EXHIBIT C

# **DRAFT MIL INSPECTION PROTOCOL 2020 HAULING SEASON**

## **I. SCHEDULE, INSPECTION CYCLE, AND SELECTION PROCESS**

A Clean Diesel Specialists (CDS) Technician will be on-site to conduct MIL inspections according to the following schedule:

During the MIL Inspection Cycles (as described below), the CDS Technician will be on-site daily from 7:00am to 12:00pm, and one day per week between cycles until the end of September.

The schedule may vary. Public Works will notify Griffith Company of schedule changes.

Inspection Cycle. Each truck working on the project will be subject to the following MIL inspections.

- First Cycle. Each truck will be subject to a MIL inspection within two weeks of mobilization to the site. Trucks participating in the Phase II emissions testing will be excluded from the first cycle of MIL inspections.
- Second Cycle. Each truck will be subject to a second cycle of MIL inspections. The second cycle will occur approximately two months after the first cycle (first two weeks of July 2020).
- Third Cycle. Each truck will be subject to a third cycle of MIL inspections. The third cycle will occur approximately two months after the second cycle (first two weeks of July 2020).
- A CDS Technician will be on-site once/week after each cycle has been completed to check any trucks that may require confirmation of repair or to inspect new trucks that were added after the cycle was performed.

Selection Process. Approximately 15 trucks per day will be randomly selected by the CDS Technician for MIL inspection based on a fleet list of approved trucks provided by Public Works.

## **II. MIL INSPECTION PROCEDURE**

Once a truck is selected, an inspection of the dash for MIL light or other aftertreatment lights will be performed. Photograph of the dash may be taken by CDS.

**IF NO LIGHTS ARE FOUND TO BE ON**, the CDS Technician will still hook up to OBD connector and read any stored fault(s).

If fault(s) are found pertaining to aftertreatment issues, the fault(s) will be cleared and re-inspected on the next scheduled inspection (see above) to determine if same faults returns. Faults can go active and inactive due to the duty cycle of the truck.

- If the same fault(s) are not found on the re-inspection, the truck will be green flagged, and no additional inspections will be conducted until the next inspection cycle.
- If the same fault(s) are found a second time, whether active or inactive, and they **DO NOT DIRECTLY AFFECT EMISSIONS**, the truck will be yellow flagged and require a third re-inspection the following week. The truck will be allowed to continue to work until the next inspection the following week
- If the same fault(s) are found on the re-inspection, whether active or inactive, and they **DIRECTLY AFFECT EMISSIONS**, the truck will be red flagged and removed from the project as described below in the Notification Process. The truck will not be allowed back on-site until these faults have been rectified and proof of repairs are submitted to Public Works for approval (proof of repair shall consist of a repair invoice or signed statement by driver/operator of the repairs made). If the repairs have not been repaired, at the discretion of the CDS Technician, the truck may be immediately removed from the project, and not allowed to return to the project until the repairs are made as described above.
- All OBD scans will be saved and sent to Public Works.

**IF MIL LIGHT OR AFTERTREATMENT LIGHT IS ON**, the CDS Technician will hook up to OBD connector and both active and inactive faults will be diagnosed.

- If fault(s) found **DO NOT DIRECTLY AFFECT EMISSIONS**, the truck will be yellow flagged and require a second re-inspection the following week. The truck will be allowed to continue to work until the next inspection the following week until no MIL or AFTERTREATMENT light is found. Examples of faults that **DO NOT DIRECTLY AFFECT EMISSIONS** to be yellow flagged:
  - Coolant Faults
  - Brake, clutch, throttle or wheel speed sensor faults
  - DPF soot level faults
  - Turbo Faults

- Engine faults (i.e. misfire, injector, crankcase vent press, etc.)
- If faults found DIRECTLY AFFECT EMISSIONS, the truck will be red flagged and removed from the project as described below in the Notification Process. The truck will not be allowed back on-site until these faults have been rectified and proof of repairs are submitted to Public Works for approval (proof of repair shall consist of a repair invoice or signed statement by driver/operator of the repairs made). If the repairs have not been completed, at the discretion of the CDS Technician, the truck may be immediately removed from the project, and not allowed to return to the project until the repairs are made as described above. Examples of faults that DIRECTLY AFFECT EMISSIONS to be red flagged:
  - SCR Conversion efficiency faults
  - NOX sensor faults
  - DEF faults
  - EGR Temp and Pressure faults
  - EGR Valve faults
- All OBD scans will be saved and sent to Public Works.

### **III. NOTIFICATION PROCESS**

Public Works will provide the results of the MIL inspections to Griffith Company by 10 am the following day. If the truck has been red flagged as described above, the truck will be removed from the project at the end of the day that notification was provided to Griffith Company. The truck will not be allowed back on-site until these faults have been rectified and proof of repairs are submitted to Public Works for approval (proof of repair shall consist of a repair invoice or signed statement by driver/operator of the repairs made).

## **EXHIBIT D**

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS  
CONSTRUCTION DIVISION

**PROJECT MEMORANDUM**

PROJECT NAME	Devil's Gate Dam and Reservoir Sediment Removal Project	PID	WRDM000037	PCA	HF00710004	MEMO NO	CM-8
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TO:	Rick Pike	FROM:	Brittany Barker
ADDRESS:	Griffith Company 12200 Bloomfield Ave, Santa Fe Springs, CA 90670	ADDRESS:	LA County Public Works 900 S. Fremont Ave, Alhambra, CA 91803
TEL. No.	(714) 318-8288	TEL. No.	(626) 458-4971; (626) 476-4875 cell
FAX No.		FAX No.	
SUBJECT	<b>Phase 2 Truck Emissions Measurement Program – Part 1</b>		

MESSAGE:

On August 16, 2019, Public Works informed Griffith of Public Works' intention to work with CARB on the implementation of an additional higher-level truck emissions monitoring study at the Devil's Gate Reservoir Restoration Project. Discussions between CARB, UC Riverside (UCR), Public Works, and community stakeholders have been on-going developing a procedure on implementing this Phase 2 Truck Emissions Measurement Program (Phase 2 Program).

At the Partnering Meeting on September 24, 2019, Cal Earth requested that they be included in the discussions surrounding this Phase 2 Program to get a better understanding of the Program. Public Works set up a meeting on October 3, 2019 with CARB, UCR, Public Works, Griffith and Cal Earth, but Griffith and Cal Earth declined attending until they received a procedure in writing. The Operations Plan has been finalized and is attached to this Project Memorandum. Additionally, a draft flyer has been included for your consideration.

For the Phase 2 Program, the emissions information will be collected and analyzed by UCR, then reviewed by CARB for statistical purposes. Public Works will use the results to measure sediment haul truck emissions and inform future operations. Data will be confidential regarding driver name. Data will be associated with each truck number assigned to the project. Driver may be required to open the hood in order to allow UCR to verify that any required engine recalls have been performed. A photo may be taken of the associated engine tag and recall sticker. If the truck fails the UCR MIL check, then Public Works will be immediately notified and subsequently Griffith of the timeline driver will have to correct the MIL issue. Public Works proposes a per truck incentive of \$200, which includes \$125 to the owner.

Part 2 of the Phase 2 Program will be conducted in Spring 2020 that will similarly measure sediment haul truck emissions. Another Project Memorandum will be issued in the Spring once details are finalized.

SIGNED		DATE	10/17/19
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# Devil's Gate Field On-Site Operations Plan

## **Purpose**

Conduct OBD scans and emissions measurement of sediment haul trucks.

## **Test Equipment**

HEM logger - J1939 mini logger

SilverScan - Computer (CARB) with SilverScan software

Camera – to take digital images of tested vehicle

## **Truck selection and testing location**

1. All trucks will have emissions measured.
2. Trucks will be pulled aside near the scale at Devil's Gate. Specifically, before they approach the scales.
3. Truck selection will begin around the time the vehicles are making their second trip to the site (~8:30 AM) to not add any additional congestion to the early morning operation at the site.
4. Approximately 10 trucks will be tested each day.

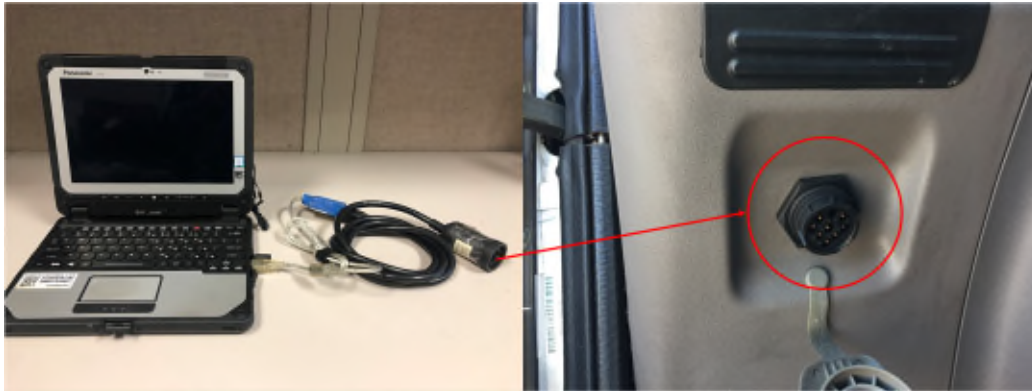
## **Truck information gathering, OBD scanning, and data logging**

1. Two UCR engineers/technicians will be on-site at the test location.
2. Note that on the average, the OBD data collection is expected to take 15 minutes or less.
3. One UCR engineer/technician will take photographs of:
  - a. License plate
  - b. Overall truck (to identify truck type and manufacturer).
  - c. Labels on side of door or at door jamb (VIN, year of MFR, make, build year, etc.)
  - d. Odometer
  - e. Whole dashboard if MIL error shows up.
  - f. For trucks under recall status, the driver may be asked to open the hood of the vehicle to allow for pictures of the engine label to ensure the truck is compliant with any recall repairs.
  - g. **Note that no pictures will be taken of the driver of the truck.**
4. Engine MIL bulb check: One engineer/technician will perform a MIL bulb check (key on/engine off) and illumination check (engine running for a few seconds to determine if the MIL turns off) before scan begins. If MIL bulb check fails, then PW will immediately be informed.



5. A second engineer/technician will perform the OBD data collection with a data logger and SilverScan computer. This will include fault codes or diagnostic messages from the engine's engine control module (ECM).

- SilverScan Data Logging: A computer loaded with SilverScan software will be plugged into the vehicle's ECM port. A picture of this system is provided below. The SilverScan software will collect information for:
  - all "standard" diagnostic messages (DMs) or fault codes, including DM1=Active, DM2=Previous, DM6=Emission Pending, DM12=Emission, DM23=Emission Previous, DM27=All Pending, DM28=Emission Permanent. This will include current and historical data.
  - Data will be collected from all relevant controllers including Engine 1 & 2 (0x00 & 01), Transmission 1 & 2 (0x03 & 4), Exhaust Emission Controller (Controller 0x3D), Aftertreatment 1 intake/outlet (0x51 & 0x52), DPF (0x55) and any other relevant controllers.



--- The scan by the Silverscan computer will take approximately 2 minutes.

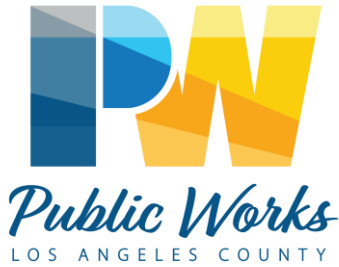
- HEM mini logger: OBD scan
  - a. The data logger will be plugged into the vehicle ECM J1939 or J1979 (Volvo's) port. This is illustrated in the picture above.
    - a. For trucks equipped with an ELD device that also connects to the truck's ECM port, UCR will provide the driver with an ELD waiver form from CARB providing UCR authorization to temporarily remove the ELD connector for the purpose of this test. UCR will reinstall the ELD at the completion of testing. The driver can hold onto the ELD during the testing round trip.
  - b. The truck will be keyed on by the UCR engineer. Once activated with the data logger LED turned green, the data logger will collect data for approximately 120 seconds.
  - c. This data logger will be removed from the truck's ECM port.



- HEM mini logger: data logging during one operational trip. Another HEM data logger will be installed to collect data while the driver carries out their normal operations over a single round trip that will include sediment pick-up, hauling of sediment away for disposal, and then returning to the site for its next load. The emphasis of this data collection will be on collecting real-time NOx sensor, exhaust temperature, GPS, engine speed and torque, and fuel flow data.
- d. Once the data logging is completed (c above), a second data logger will be installed into the truck's ECM J1939 or J1979 (Volvo's) port and its operation verified.
- e. The data logger will be secured with zip ties such that it does not intrude upon the driver during normal operation, as shown in the picture above.
- f. The data logger will collect data as the driver operates the truck over a single round trip of operation.
- g. The data logger will be removed as it returns to the scales after completing its round trip of operations. The removal of the data logger should take approximately 1 minute or less.

### **Data analysis**

1. OBD data will be evaluated to identify any active, pending, or codes that may have recently cleared. Vehicles with active codes will be reported to the county. Other data will be summarized in a report that will be provided after the field study is completed.
2. Data relating to codes with historical codes or recently repaired codes will be included in the analysis report, **but will not be subject to enforcement by CARB.**
3. Average NOx emissions per trip will be reported for each truck based on data collected from the NOx sensor on the vehicle.
4. The emissions of NOx along the trip route will be calculated for different segments of the typical trip route.



## ENGINE OBD SCAN

Under contract with Los Angeles County, the University of California at Riverside in conjunction with TetraTech are collecting engine data from the heavy-duty haul trucks operating on the Devil's Gate project.

The data collected as part of this study is an extension of the opacity tests and MIL checks that are already being performed at the site by LA County.

Data collected include the following:

- Visual and photographic inspection: License plate number, mileage, VIN, repair labels and other details.
- A ready-only scan of your truck's computer for stored data.
- Engine monitoring using a data logger for one round-trip.

Note:

- This will NOT alter your truck or affect your engine or performance in any way
- No personal info will be released
- No CARB enforcement action will result from this information.

The process takes less than 15 minutes.

If any mechanical issues are noted, the information will be provided to the driver.

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If you have any questions or issues, please contact (to be provided by Griffith Company).

**Griffith Responses to Memo 8 –**  
**Phase 2 Truck Emissions Measurement Program**  
**Dated 10/24/19**

1. What will this data be used for except to create a new level of inspection and oversight and compliance for the truckers? The OBD scan is essentially a check that the MIL is working correctly, that the bulb is illuminating properly, and that it is not turned off by something like disconnecting the battery. The NOx sensor data (collected during the round trip) would identify if there are obscure issues with the NOx catalyst that the MIL is not seeing. This will also ensure that there are not any areas of particularly high emissions in the community along the route.
2. What is the level of expertise of these representatives? (UCR Representative access to their truck) UCR has performed similar work, obtaining data from between 400 to 500 trucks over the past 3-5 years.
3. Have they been trained on this by the truck manufactures to perform this? For all types of trucks? UCR has performed this on a wide range of trucks over the 400-500 that they have data logged/scanned to date.
4. What other data will be collected and analyzed and used to interfere with the ability of the trucks to operate on this project? UCR will be logging the NOx sensor data from the truck itself, which will give an idea of the NOx emissions of the trucks.
5. How will the data will be used? Will it be used to apply new requirements on the project and remove trucks from the project? What guarantee does the trucker have that they will not be removed from the project or required to do more expenses in order to work on this project. Where is the compensation promise from the LAC for any subsequent payment for this potential impact? The essence of the OBD scan is very similar to that of the MIL check. The OBD scan can look for some things that might not be captured with the MIL light check, such as if the bulb is burned out or if the MIL light has been turned off by disconnecting the battery, or something similar. But in general, if the MIL is functioning correctly, the OBD scan will confirm the status of the MIL light. The NOx sensor data collected during the round trip could identify some significant issues that might not be captured by the MIL/OBD scan. But, in general, if the MIL/OBD is working properly, the MIL should capture any of these issues. If a problem is identified with the MIL light or major emissions component, or if it is otherwise determined that emissions components are not functioning correctly, then a repair will be needed without County compensation in order to continue working on the project. In addition, the data may be used to inform the County of potential modifications to operations that would enhance air quality, including, but not limited to, changes in hours of operations, route changes, changes in the number or frequency of truck trips, and changes to the types of trucks used on the project.

6. What does standing by while the UCR representative runs computer tests on the truck consist of? **UCR would merely need access to the truck's OBD port, and the ability to take a few photographs, and securing the data logger for the round trip. Then for removing the data logger once the truck returns to the site.**
7. Does it manually control the engine and truck from their computer? **No. The data loggers only read the signals that are publicly available from the engine control module and OBD system.**
8. Per the memorandum this can take 15 to 30 minutes. What if the trucker loses a round while participating in this program. Where is the compensation? **The OBD scans should actually take less than 10 minutes. If there are any issues that make the inspection go beyond 15 minutes, then that truck would be released and not subjected to further OBD scans. The County has proposed an additional hour of compensation as an incentive for approximately 15 minutes of work.**
9. Keeping the device hooked up to the trucks and asking them to do a run, what happens if the OBD is disconnected and its normal function can't work and it creates a failure on the truck? Will UCR pay for the repair? **The data logger will be secured in such a manner that it should not disconnect, unless it is otherwise pulled out. Checks will be run during the OBD scan to ensure the data loggers operate correctly during the round trip and will not cause failures. Note that the data loggers are primarily reading information put out publicly by the engine's control system and are not sending signals to the engine's control system. The function should be similar to ELD devices that are commonly used by truckers.**
10. The truckers will lose more time while pulling to the side to get connected and then disconnected, will they be compensated for all this down time? **The County has proposed an additional hour of compensation as an incentive for approximately 15 minutes of work.**
11. The truckers will be subjecting themselves to additional testing next season for Nox Devices to record Nox emissions & etc, the protocol of this is not known at this time since they don't have the devices designed yet. Damage to the trucks can occur from the device unless it's a known device and proven not to cause any damage to the trucks. The outcome of these tests can result to remove the truckers from the project. Where is the assurance that this will not be the case? **UCR will be conducting trials on any new devices prior to bringing them to the test site in Spring 2020.**
12. What happens if a truck needs a new emission system or new engine to keep working after the test is complete? What if they have to do a recall or get a sticker? Will that cost be covered including their lost revenue to chase down and do the additional work? **As with the MIL Inspection, it is the truck owner's responsibility to maintain a properly functioning truck that meets 2010 emissions standards. The County will not compensate the driver for any repairs necessary.**

## **EXHIBIT E**

MITCHELL M. TSAI (Cal. Bar No. 277156)  
MITCHELL M. TSAI, ATTORNEY AT LAW  
155 South El Molino Avenue, Suite 104  
Pasadena, California 91101  
Telephone: (626) 381 - 9248  
Fax No.: (626) 389 - 5414  
Email: mitch@mitchtsailaw.com

Attorneys for Petitioners and Plaintiffs,  
ARROYO SECO FOUNDATION and PASADENA AUDUBON SOCIETY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

ARROYO SECO FOUNDATION, a California  
Non-Profit Corporation; PASADENA  
AUDUBON SOCIETY, a California Non-Profit  
Corporation;  
Petitioners and Plaintiffs.  
v.

COUNTY OF LOS ANGELES, a political  
subdivision of the State of California and Charter  
County; COUNTY OF LOS ANGELES BOARD  
OF SUPERVISORS, governing body of the  
County of Los Angeles; COUNTY OF LOS  
ANGELES DEPARTMENT OF PUBLIC  
WORKS, a public entity; LOS ANGELES  
COUNTY FLOOD CONTROL DISTRICT, a  
public entity; and DOES 1–10, inclusive.  
Respondents, and Defendants.

LOS ANGELES COUNTY FLOOD CONTROL  
DISTRICT, a public entity; and DOES 1–10,  
inclusive.  
Real Parties in Interest and Defendants.

CASE NO.: BS171826

**STIPULATION RE SETTLEMENT AND  
REQUEST FOR CONTINUING  
JURISDICTION PURSUANT TO CCP §  
664.6; [PROPOSED] ORDER**

California Environmental Quality Act (Cal. Pub  
Res. Code § 21000 *et seq.*); Code of Civil  
Procedure §§ 1094.5, 1085

Assigned for All Purposes to the Honorable James  
C. Chalfant, Dep't 85

1 Petitioners ARROYO SECO FOUNDATION and PASADENA AUDUBON SOCIETY  
2 (collectively "Petitioners") and Respondents and Real Parties in Interest COUNTY OF LOS ANGELES,  
3 COUNTY OF LOS ANGELES BOARD OF SUPERVISORS, COUNTY OF LOS ANGELES  
4 DEPARTMENT OF PUBLIC WORKS, and LOS ANGELES COUNTY FLOOD CONTROL  
5 DISTRICT (collectively "Respondents" or with Petitioners as "Parties"), by and through their attorneys  
6 of record, hereby agree and stipulate as follows:

7 RECITALS

8 WHEREAS the Parties have arrived at a settlement agreement to amicably resolve the above  
9 captioned matter, a true and correct copy of which is attached as Exhibit 1 to this Stipulation  
10 ("Agreement");

11 WHEREAS, pursuant to this Agreement, the Parties wish to request that the court retain  
12 jurisdiction to enforce the terms of the Agreement pursuant to Section 664.6 of the Cal. Code of Civil  
13 Procedure ("CCP"); and

14 WHEREAS, pursuant to this Agreement, the Parties wish to request that the Court find that the  
15 changes to the Devil's Gate Dam Sediment Removal and Management Project ("Project") made by the  
16 Agreement are consistent with the July 24, 2017 Revised Final Environmental Impact Report  
17 ("RFEIR") for the Project.

18 STIPULATION

19 THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

- 20 1. The Court retain jurisdiction to enforce the terms of the Agreement pursuant to CCP §  
21 664.6;
- 22 2. The Court dismiss the entire action of all parties and all causes of action with prejudice;
- 23 3. The Court find that the changes to the Project made by the Agreement are consistent with  
24 the RFEIR to the Project;
- 25 4. The undersigned have the authority to enter into this Stipulation on behalf of each of their  
26 respective clients; and
- 27 5. This Stipulation may be executed in counterparts and all such counterparts, when  
28 executed, shall constitute a valid and binding agreement.

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1 DATED: \_\_\_\_\_  
2  
3

MITCHELL M. TSAI, ATTORNEY AT LAW

4 By: \_\_\_\_\_  
5 MITCHELL M. TSAI

6 Attorneys for Petitioners Arroyo Seco Foundation and  
7 Pasadena Audubon Society

8 DATED: \_\_\_\_\_

Mary C. Wickham, County Counsel  
Michael S. Simon, Senior Deputy County Counsel  
Los Angeles County Counsel's Office

9 BEST BEST & KRIEGER LLP

10  
11 By: \_\_\_\_\_  
12 MICHELLE OUELLETTE  
SARAH E. OWSOWITZ

13 Attorneys for Respondents/Defendants COUNTY OF  
14 LOS ANGELES et al. and Real Party in  
15 Interest/Defendant LOS ANGELES COUNTY FLOOD  
16 CONTROL DISTRICT  
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**[PROPOSED] ORDER**

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE JAMES C. CHALFANT  
Judge of the Superior Court